

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

|                    |   |                                |
|--------------------|---|--------------------------------|
| HENRY JOINER,      | ) |                                |
|                    | ) |                                |
| Petitioner,        | ) |                                |
|                    | ) |                                |
| v.                 | ) | CIVIL ACT. NO. 2:22-cv-629-ECM |
|                    | ) | (WO)                           |
| WARDEN, JOHN CROW, | ) |                                |
|                    | ) |                                |
| Respondent.        | ) |                                |

**O R D E R**

Now pending before the Court is Petitioner Henry Joiner's *pro se* notice of appeal<sup>1</sup> (doc. 29) which the Court construes as containing a motion for a certificate of appealability and a motion to appeal *in forma pauperis*.

A certificate of appealability is necessary before a petitioner may pursue an appeal in a habeas corpus proceeding. *See* 28 U.S.C. § 2253(c)(1)(B). To mandate the issuance of a certificate of appealability, a petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Barefoot v. Estelle*, 463 U.S. 880, 893 (1983). Further, “[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). In making this determination as to good faith, the Court must use an objective standard, such as whether the appeal is “frivolous,” *Coppedge v. United States*, 369 U.S. 438, 445 (1962), or

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<sup>1</sup> In his *pro se* notice of appeal, the Petitioner asserts that he has been appointed counsel to represent him on his appeal. (Doc. 29 at 1). It appears from the record that counsel is representing the Petitioner on his direct appeal before the Alabama Court of Criminal Appeals, (doc.19-12). Moreover, counsel has not filed a notice of appearance in this case.

“has no substantive merit,” *United States v. Bottoson*, 644 F.2d 1174, 1176 (5th Cir. Unit B May 1981) (per curiam).

Applying these standards, the Court finds that Joiner has not made a substantial showing of the denial of a constitutional right. In addition, the Court is of the opinion that Joiner’s appeal has no legal or factual basis and, accordingly, is frivolous and not taken in good faith. *See Rudolph v. Allen*, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam).

Accordingly, it is

ORDERED that Joiner’s motion for leave to appeal *in forma pauperis* and motion for a certificate of appealability (doc. 29) are DENIED.

Done this 26th day of May, 2023.

/s/ Emily C. Marks  
EMILY C. MARKS  
CHIEF UNITED STATES DISTRICT JUDGE